

The Appellate Division for the First Department affirmed Petitioner's conviction on April 21, 2015. *People v. Owens*, 7 N.Y.S.3d 128 (App. Div. 2015). He then sought leave to appeal from the New York Court of Appeals, which was denied on April 5, 2016. *People v. Owens*, 27 N.Y.3d 1004 (2016). As a result, Petitioner's conviction became final on July 4, 2016. He filed the Petition

over 29 months later on December 12, 2018.

The Petition was referred to the Honorable Robert W. Lehrburger on July 23, 2019, Dkt. 9, and Respondent filed an opposition on October 25, 2019, Dkt. 13. By Order dated September 25, 2020, Judge Lehrburger issued a Report and Recommendation, recommending that the Petition be denied because it was filed beyond the one-year statute of limitations under 28 U.S.C. § 2244(d)(1) and Petitioner failed to demonstrate that his untimely Petition is entitled to equitable tolling. Dkt. 20.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no objections are made, the Court reviews the Report and Recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days to file written objections to the Report and Recommendation. Dkt. 20 at 16. On November 10, 2020, Judge Lehrburger granted an extension of Petitioner’s deadline to file his objections to November 30, 2020. Dkt. 23. More than six months have passed since that deadline, and neither party has filed any objections. The parties have therefore waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation and finds it to be well reasoned and its conclusions well founded. Accordingly,


the Court adopts the Report and Recommendation in its entirety and Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to close this action and mail a copy of this Order to the *pro se* Petitioner.

SO ORDERED.

Dated: May 13, 2021  
New York, New York

  
\_\_\_\_\_  
JOHN P. CRONAN  
United States District Judge